Supreme Court, U. S.
FILED
JUL 14 1980
MICHAEL RODAK, JR., CLERK

No. 80-69

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

NEAL-COOPER GRAIN COMPANY,

Petitioner,

vs.

INTERNATIONAL COMMODITIES EXPORT CORPORATION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

STEPHEN L. CORN
MILLARD S. EVERHART
1807 Broadway
Mattoon, Illinois
Attorneys for Petitioner

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6 Williston on Contracts, (3d Ed., 1962) 535, § 887D; 19

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No. _____

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INTERNATIONAL COMMODITIES EXPORT CORPORATION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

To The Honorable, The Chief Justice And The Associate Justices Of The Supreme Court Of The United States:

The Petitioner, Neal-Cooper Grain Company, a Corporation, respectfully prays that a Writ Certiorari issued to review the judgment and opinion of the United States Court of Appeal for the Seventh Circuit entered in this proceeding on April 16, 1980.

I.

QUESTIONS PRESENTED FOR REVIEW

1. Should the procedure under the arbitration act require basic fairness in preparation in the trial of a case.

2. Should the Award entered herein be vacated because of acts of ICEC in creating an unfair and partial hearing or because the award allows either punitive damages or a double recovery.

3. Should the Doctrines of manifest disregard of the law and of irrationality to this set of facts in order to vacate the award.

II.

OPINIONS BELOW

The opinion of the United States Circuit Court of Appeals for the Seventh Circuit was entered April 16, 1980 affirming the decision of the United States District Court for the Central District of Illinois which confirms an award of the American Arbitration Association dated August 30, 1978. The opinion is

unreported but appears in the Appendix hereto.

III.

JURISDICTION

This Petition seeks to review an Order entered by the United States Court of Appeals for the Seventh Circuit entered April 16, 1980 pursuant to Section 1254, Title 28, United States Code.

IV.

"In either of the following cases the United States Court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration -

> "(a) Where the award was procured by corruption, fraud, or undue means.
>
> "(b) Where there was evident partiality or corruption in the arbitrators, or either of them.
>
> "(c) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or any other misbehavior by which the rights of any party have been prejudiced.
>
> "(d) Where the arbitrators exceeded their powers, or so imperfectly

executed them that a mutual, final and definite award upon the subject matter submitted was not made.

"(e) Where an award is vacated and the time within which the agreement required the award to be made has not expired the court may, in its discretion, direct a rehearing by the arbitrators." Section 10, Title 9, USC.

V.

STATEMENT OF THE CASE

A Complaint was filed by Neal-Cooper Grain Company (hereinafter referred to as Neal-Cooper) against International Commodities Export Corporation (hereinafter referred to as ICEC) and others in the District Court for the then Eastern District of Illinois alleging breach of contracts by ICEC. Jurisdiction in the Federal District Court was based upon diversity. Arbitration was compelled upon motion by ICEC pursuant to Title 9, USC. The District Court subsequently confirmed an award entered by the American Arbitration Association and an appeal was taken from that confirmation.

These parties entered into two contracts for the sale and purchase of fertilizer products. One contract, dated October 18, 1974, was for the purchase by ICEC of 2,000 short tons of anhydrous ammonia (hereinafter referred to as AA). (Ex. C-18) That contract required the AA to be delivered to Brownsville, Texas. Neal-Cooper committed itself to purchase the same amount of AA from Ricardo Guajardo. (T 175-176)

The other contractual arrangment involved two contracts dated October 18, 1974 and December 9, 1974. Both contracts were for 2,500 metric tons of diamonium phosphate (hereinafter referred to as DAP) for delivery to Tampa, Florida. The products from the two contracts were to be combined for shipment aboard one vessel. (Ex. C-18 and 21)

The purchaser from ICEC of both products was Guanos y Fertilizantes de Mexico, S.A. (hereinafter referred to as Guanos). (T 452-465)

Neal-Cooper is a wholesale distributor of fertilizer. (T 30-31) Prior to these contractual arrangments, Neal-Cooper had done business in the Brownsville, Texas area through a supplier by the name of William Felder. (T 88-89, 817-818) Neal-Cooper began doing business with Guajardo in the late spring of 1974. Many transactions involving Felder and Guajardo had been completed without any problems. (T 123-127, 177) Neal-Cooper was unaware of the source of Guajardo's supply until April, 1975. (T 97)

On December 6, 1974, ICEC forwarded a telex to Neal-Cooper submitting shipping instructions for the AA. (Ex. 6-16) Shortly thereafter, Cooper became aware, through Felder, that the AA was stored in the same location where it was to be delivered. (T 182) Neal-Cooper had no reason to believe that purchasing fertilizer materials out of that location was improper (T 820), nor did it have any reason to believe that

Guajardo did not own the products he was selling since it was common for companies to share tank space for the storage of fertilizer commodities. (T 189, 388, 820)

Transshipment of the AA was necessary in order to generate documents required by ICEC. (T 185) The method of transshipment was communicated to ICEC who had no objection. (T 185-186, 195, 254, 823-825 and Ex. R-12, EX. R-11)

The transshipment began in late December, 1974 and documents were produced for Neal-Cooper's billings to ICEC. (T 198-201, 203-207, 279) Payment was made by ICEC to Neal-Cooper. (T 279) ICEC, in turn, billed Guanos for the AA and was paid by Guanos. (T 637, 804-805)

In late January or February, 1975, William Zisson of ICEC was informed by Fernando Garcia Gutierrez of Guanos that he understood the AA was being smuggled and therefore there should be no further shipments. (T 474-478) No reference was

made to Neal-Cooper being involved in the alleged smuggling operations.(T 474-478) A telex was forwarded by ICEC to Neal-Cooper on February 6 stating the buyer of ICEC had requested immediate stopping of shipments. (Ex. C-4) The telex made no reference to any activities on the part of Neal-Cooper. On March 12, 1975, ICEC sent Neal-Cooper a letter stating its buyer had cancelled the unshipped balance of the AA order and therefore no further shipments were to be made. (Ex. C-28) On March 12, 1975, a separate letter was sent to Neal-Cooper stating the ICEC's buyer had cancelled the DAP contracts and therefore, ICEC considered the DAP contracts cancelled. (Ex. C-28, P. 2) There were continuing discussions between Neal-Cooper and Zisson subsequent to the March 12, 1975 letter concerning ICEC taking delivery of the DAP. (T 827-830) During this period of time, Neal-Cooper anticipated ICEC taking the DAP because of those discussions. (T 830)

On May 8, 1978, Neal-Cooper's Illinois counsel directed a letter to Zisson stating Neal-Cooper did not concede or accept ICEC's purported right to cancel the DAP contracts as expressed in the March 12, 1975 letter. (Ex. C-29) Subsequently, Zisson contacted Guanos and asked for written cancellation of the DAP contracts. (T 502) During the last week of May, Zisson developed, along with Gutierrez, a sequence of documentary communications which purported to formally cancel the DAP contracts between ICEC and Guanos. (T 720-735, 763; Ex. R-8) The formal cancellation from Guanos relied on Force Majeure conditions, but Zisson knew the conditions did not exist. (T 504 and 733) Shortly after the sequence of documentary communications, ICEC began doing business with Guanos again. (T 508-735)

Shortly thereafter, the Complaint was filed by Neal-Cooper. (R-1) The original suit was against ACLI International, Inc.

as the parent of ICEC. On November 25, 1975, the depositions of Robert Hall and Gary Cooper were taken. (R-13) Counsel for ACLI who later represented ICEC participated. The Complaint was amended to name ICEC as a party defendant (R-12) and ICEC subsequently filed its Demand for Arbitration. (R-49) On April 22, 1976, the deposition of Zisson was undertaken. During cross-examination by counsel for Neal-Cooper, continued objections and motions substantially limited the testimony. The deposition was terminated before its conclusion by ICEC for the stated reason the deponent had to leave.

On September 28, 1976, the District Court compelled arbitration. (R-42)

Neal-Cooper filed an Answer and Counter-Claim with the American Arbitration Association. (R-49) A Motion for Discovery and Supporting Memorandum was filed. (R-49) A memorandum in opposition was filed by ICEC. The arbitrators denied the motion

for Discovery.

Subsequently, ICEC filed its Pre-Trial Memorandum alleging that it would "dispositively show that this massive, illegal scheme was mastermined by Neal-Cooper, and its principal, Gary Cooper, who, in addition to engineering the operation, also provided the necessary financial backing for the scheme and the necessary distribution network in the United States through Neal-Cooper's business connections." (R-49, No. 5) The Memorandum also referred to a grand jury investigation against Neal-Cooper. Evidence was presented on April 4 and 5 and April 16 and 17, 1978. The decision of the Arbitrators was rendered on August 30, 1978 providing that Neal-Cooper should apy ICEC $166,830.60 and that all other claims and counter-claims were denied. (R-43)

In August, 1979, Gary Cooper was tried before a jury in the United States District Court for the Southern District of Texas,

Brownsville, Division, under Cr. No. B-78-591 on two counts from an indictment charging criminal conduct concerning alleged activities involving the AA. The first count charged Guajardo with theft and Gary Cooper with aiding and abetting. The second count charged Gary Cooper and others with conspiracy to steal anhydrous ammonia. At the close of all of the evidence, the District Judge dismissed the first count, specifically finding there was no theft on the part of Guajardo and therefore, Gary Cooper could not have aided and abetted. The jury, within 30 minutes, returned a verdict of not guilty on the conspiracy count.

VI.

REASONS FOR GRANTING THE WRIT.

This Court has, through its decisions and other pronouncements, encouraged the use of forums other than Courts as means of resolving disputes. That encouragement must be coupled with a requirement that parties will receive the same fair and

impartial hearing they would receive if their dispute was presented to a court of law.

Congress has provided arbitration as one such forum by Title 9 of the United States Code. However, Congress failed to provide for the procedural safeguards constitutionally mandated that are granted in a court action. Accordingly this Court must require procedural due process for arbitration to assure fair and impartial hearings. The concept of fairness was addressed by this Court in Burchell v. Marsh, 58 U.S.344, 15 S.Ct. 96, 99 (1954) when it encouraged arbitration. That concept of fairness in arbitration matters is continued through subsequent cases. See Harvey Aluminum v. United Steel Workers of America, 263 Fed.Supp.488 (U.S.D.C., C.D. Cel.,1967) and San Martine Compania deNav v. Saquenay Term., Ltd., 293 Fed. 2d 796 (9th Cir. 1961).

It is axiomatic that parties to an

arbitration must be allowed to adequately prepare their cases and have the cases presented to an impartial and unprejudiced trier of fact.

Here, Neal-Cooper was completely prevented from any discovery. The allegations of ICEC were such that the source of the evidence was not available to Neal-Cooper through any means. The facts surrounding the breach of the contracts were sufficiently complex to need discovery. However, the added element of serious criminal allegations compel the need for basic discovery in order for Neal-Cooper to have prepared its case and be prepared to meet those allegations. ICEC obtained its discovery from Neal-Cooper while the matter was pending before the District Court and then completely frustrated all further efforts for discovery through the arbitration proceedings.

ICEC initiated its efforts to frustrate a fair hearing in the District Court. After

having the benefit of discovery and knowing the grounds it would use to defend the claims of Neal-Cooper in arbitration, it filed a Demand for Arbitration. Prior to the hearing on the Demand, it refused to allow adequate questioning of its primary officer involved in the occurrence. After the Demand for Arbitration was granted, it refused any other discovery. Neal-Cooper instituted requests for discovery both to ICEC on an informal basis and to the American Arbitration Association. ICEC objected to any discovery and its objection was allowed. Without a discovery program, ICEC had a free hand to make the serious allegations of criminality knowing that it could not prove those allegations and knowing Neal-Cooper could not discovery the supposed source for the allegations, but also knowing that it would obtain its desired effect of prejudice by creating an atmosphere of impropriety and criminality. It had no other means available to prevail.

The Arbitrators allowed ICEC to present, solely by hearsay testimony, the reasons why the Mexican Government cancelled its contracts with ICEC. The name of the purported Mexican official was never given to Neal-Cooper nor was any advice given that ICEC would rely, solely, upon such testimony. Without basic discovery, Neal-Cooper was completely prevented from learning the names of the witnesses and, therefore, even having investigation to discovery the import of that person's possible testimony. The allegations presented by ICEC were such that Neal-Cooper could not discovery, by any means other than discovery, what ICEC had available by evidence. By frustrating discovery, Neal-Cooper was therefore not able to prepare the case and present to the Arbitrators the fact that ICEC could not prove its allegations. Had discovery been available, ICEC would have been prevented from including such scandalous and serious allega-

tions and thereby prejudicing the arbitrators. ICEC succeeded in creating the scenario which prevented a fair and impartial hearing.

The purpose of arbitration is, purportedly, to provide a prompt, effective and informal method of resolving disputes. An examination of this record will reveal that this proceeding was not prompt, effective or informal.

Their trier of fact should not be subjected to such serious allegations. An examination of the Award shows that it allowed either a double recovery for the monies received from the Mexican Government for product delivered or resulted in a punitive award, contrary to controlling authority. Nunez v. Horn, 336 F.Supp. 447 (DC Puerta Rico, 1970), Dini v. Naiditch, 20 Ill.2d 406, 170 N.E. 2d 881 (1960) and Garrity v. Lyle Stewart, Inc., 40 N.Y.2d 354, 336 N.Y. 2d 831, 353 N.E.2d 793 (1976). The

award manifests the bias and prejudice and, alone, requires its vacation and remandment for retrial in a fair and impartial manner.

In the Courts below, Neal-Cooper argued that the doctrine of manifest disregard of the law and the doctrine of irrationality applied. With no comment, the Court stated the contention was not supported by the record. These holdings ignore that these were two separate contractual arrangments between the parties. The alleged illegal acts concerned only the AA contract. No illegal acts were alleged in regard to the second contractual arrangment for the sale of DAP. ICEC contended its buyer was the same for both contracts and therefore, ICEC was allowed to cancel both contractual arrangments with Neal-Cooper.

By asserting that reasoning for cancellation, ICEC undertook the burden of proving the following:

1) The acts of Neal-Cooper were illegal;

2) There was a direct connection between the illegal acts and the obligation sued on and that Neal-Cooper resorted to gravely immoral and illegal conduct in accomplishing its performance (McConnell v. Commonwealth Pictures Corp., 7 N.Y. S. 2d 483 (1960).

3) Those acts caused the buyer from ICEC to cancel its contracts, and

4) The acts of Neal-Cooper were so gross as to allow ICEC to cancel its separate contracts for the DAP.

See 3A Corbin on Contracts, 290, 291, § 696; 6 Williston on Contracts, (3d Ed., 1962) 535, § 887D; 27 ALR 1167; Kaiser Trading Company v. Associated Metals and Minerals Corp., 321 F. Supp. 923, App. dism'd 443 F. 2d 1364 (9th Cir., 1971).

ICEC failed to prove any acts of Neal-Cooper were illegal. ICEC could only prevail by proving that the acts of Neal-Cooper were so gross and improper in the AA transaction that its conduct was directly responsible for ICEC's loss of

contracts for the DAP.

In order for the Arbitrators to give an exclusive award, they must have found that ICEC had a right to cancel the contracts. If so, the award necessarily must have included damages for ICEC for the DAP contracts. On the other hand, if ICEC did not have a right to cancel the DAP contracts, the Arbitrators had to allow Neal-Cooper its lost profits on the DAP contracts. The Arbitrators did neither. A clearer example of an irrational decision could not exist.

This Court in Wilco v. Swan, 346 U.S. 427, 74 S.Ct. 182 (1953) recognized that an arbitration award can be vacated for such an award evidences a manifest disregard of applicable law. The decision reaffirmed the longstanding rule that arbitration awards will not be vacated merely because of errors in the interpretation of applicable law. Lower courts have since grappled with the question of

what constitutes "manifest disregard of the law". See Trafalger Shipping Co. v. International Milling Co., 401 F.2d 568, 573 (2d Cir., 1968); I/S Stavborg v. National Metal Converters, Inc., 500 F.2d 424 (2d Cir., 1974) and National Railroad Passenger Corp. v. Chesapeake & Ohio Ry., 551 F.2d 136 (7th Cir., 1977). This case represents a classic example of manifest disregard of law. Memorandums of applicable law were presented to the Arbitrators noting the burden of ICEC in its assertion. As argued before, ICEC completely failed to sustain its burden as to any of the elements, much less all of them. Accordingly, a decision which allows either a double recovery or a punitive recovery clearly disregards the applicable law. Further, as argued in the Court below, the award is irrational when compared with the evidence and the applicable law.

This Court should present guidelines to the lower courts in their consideration

of these doctrines. This case gives a clear example of how the doctrine can be applied.

VIII.

CONCLUSION

For the reason stated, a Writ of Certiorari should issue to review the judgment and opinion of the United States Court of Appeal for the Seventh Circuit.

Respectfully submitted,

STEPHEN L. CORN
and
MILLARD S. EVERHART
1807 Broadway
P. O. Box 689
Mattoon, IL 61938

Attorneys for
Petitioner.

APPENDIX

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

(ARGUED JANUARY 4, 1980)

NPUBLISHED ORDER
NOT TO BE CITED
ER CIRCUIT RULE 35

April 16, 1980.

Before

Hon. THOMAS E. FAIRCHILD, Circuit Judge

Hon. RICHARD D. CUDAHY, Circuit Judge

Hon. FRANK J. McGARR, District Judge*

NEAL-COOPER GRAIN COMPANY,
Plaintiff-Appellant,

No. 79-1710 vs.

INTERNATIONAL COMMODITIES EXPORT CORPORATION,
Defendant-Appellee.

Appeal from the United States District Court for the Central District of Illinois. Springfield Division
No. 75-C-2069

J. Waldo Ackerman, Judge

O R D E R

Appellant, Neal-Cooper Grain Company ("Neal-Cooper"), appeals from a district court decision confirming an award by the American Arbitration Association in favor of appellee, International Commodities Export Corporation ("ICEC"). The issues raised in this appeal are: 1) whether the arbitrators' award was the result of an unfair hearing and 2) whether the award was irrational or in disregard of the law. For the reasons stated herein, we affirm the district court's decision.

The action involves three contracts for the sale by Neal-Cooper and purchase by ICEC of agricultural fertilizer. Under one contract, Neal-Cooper agreed to sell 2,000 short tons of anhydrous ammonia with delivery in Brownsville, Texas. Under the other two contracts, Neal-Cooper agreed to sell a total of 5,000 metric tons of diammonium phosphate ("DAP") with delivery

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* The Honorable Frank J. McGarr, United States District Judge for the Northern District of Illinois, is sitting by designation.

in Tampa, Florida. ICEC entered into the contracts with the intent to resell the fertilizer to a Mexican customer, Guanos y Fertilizantes de Mexico, S.A. ("Guanos"). The controversy arose when it appeared to ICEC that Neal-Cooper had delivered ammonia to ICEC that had been stolen from Guanos. ICEC subsequently cancelled all three contracts, which resulted in Neal-Cooper's institution of this action. ICEC then demanded arbitration, which the district court ordered. After a hearing, the arbitration panel entered the award in favor of ICEC.

Neal-Cooper contends that it did not receive a fair hearing because ICEC's allegations of criminality on Neal-Cooper's part poisoned the arbitrators' minds. An ancillary issue raised by Neal-Cooper concerns the denial of discovery requests which could have dispelled the allegations of criminality. Additionally, Neal-Cooper contends that the arbitrators' decision was incorrect and in disregard of the law.

Judicial review of an arbitration award is severely limited. National Railroad Passenger Corp. v. Chesapeake and Ohio Railway, 551 F.2d 136, 141-42 (7th Cir. 1977). Section 10 of the Arbitration Act, 9 U.S.C. §10 (1976), sets forth the circumstances under which the court may vacate such an award. The statute provides for vacation if "the award was procured by corruption, fraud, or undue means," id. §10(a), if "there was evident partiality or corruption in the arbitrators," id. §10(b), or if "the arbitrators were guilty of misconduct" or "exceeded their powers," id. §§10(c), (d). In this case, Neal-Cooper has not proved any of these circumstances.

The arbitrators function as judges whose sophistication and competence we presume. There is no evidence here that the arbitrators' minds were poisoned by ICEC's allegations of criminality against Neal-Cooper. Further, Neal-Cooper did not ask the panel to disqualify itself, although the panel indicated that it would consider such a motion. Having been offered the opportunity to ask for a recusal, Neal-Cooper's failure to do so constitutes a waiver of that objection. See Satterfield v. Edenton-Chowan Board of Education, 530 F.2d 567, 574-75 (4th Cir. 1975).

Neal-Cooper also asserts that ICEC's refusal to permit discovery deprived Neal-Cooper of a fair hearing because discovery could have dispelled the allegations of criminality. These were merely allegations, however, and were irrelevant to the proceedings. As noted above, there is no evidence that these allegations tainted the hearing or the arbitrators' ability to reach an impartial decision. Therefore, discovery was not necessary, and its denial was not error.

Finally, Neal-Cooper contends that the arbitrators' award was incorrect, irrational, and in disregard of the law. This contention is not supported by the record before us. Thus, we will not disturb the arbitrators' award.

In conclusion, Neal-Cooper has not shown that the arbitrators were biased or that the hearing was conducted improperly. Nor does the record indicate that the arbitrators' award was irrational or in disregard of the law. The district court's decision confirming the award, therefore, is AFFIRMED.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF ILLINOIS

FILED

MAY 16 1979

ROBERT J. KAUFFMAN, Clerk
U. S. DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

NEAL-COOPER GRAIN COMPANY, a Corporation,	)	
Plaintiff	)	
-vs-	)	No. 75-2-069
HALL CHEMICAL COMPANY, a Corporation, ACLI INTERNATIONAL, INC., a Corporation and INTERNATIONAL COMMODITIES EXPORT CORPORATION, a Delaware Corporation,	)	
Defendants.	)	

ORDER FOR FINAL JUDGEMENT

This matter comes on to be heard this 15th day of May, 1979, on the Motion of INTERNATIONAL COMMODITIES EXPORT CORPORATIO a Delaware Corporation, for an order confirming the award made by CHARLES J. HECHT, MARK A. BUCKSTEIN and HOWARD A. BAKER, Arbitrators, selected pursuant to the rules of the American Arbitration Association, said award having been entered on August 30, 1978; for Judgement on the award and for Judgement to be entered pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, and on the cross-motion of Neal-Cooper Grain Company, a corporation, for an Order vacating the award; the Court having considered all motions, having heard the argument of counsel and now being fully advised in the premises, finds as follows:

1. That the Motion of International Commodities Export Corporation, filed September 15, 1978, for entry of judgement on the arbitration award, should be allowed.

2. That the Motion of Neal-Cooper Grain Company, a corporation, to vacate the arbitration award should be denied.

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3. That pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, it is expressly determined that there is no just reason for delay in entering final judgement on the claims as between Neal-Cooper Grain Company, a corporation, Plaintiff, and International Commodities Export Corporation, a Delaware corporation, Defendant.

IT IS, THEREFORE, ORDERED ADJUDGED AND DECREED that there being no just reason for delay in entering final judgement, final judgement is expressly directed and entered as follows:

A. That the Plaintiff's Motion to Vacate the Award of the American Arbitration Association entered on August 30, 1978 is denied;

B. That the Motion to Confirm the Arbitrator's Award filed on behalf of the Defendant, INTERNATIONAL COMMODITIES EXPORT CORPORATION, a Delaware Corporation, is allowed and the same is hereby confirmed;

C. That final judgement is expressly directed and entered in favor of the Defendant, INTERNATIONAL COMMODITIES EXPORT CORPORATION, a Delaware Corporation and against the Plaintiff, NEAL-COOPER GRAIN COMPANY, a Corporation, for the sum of ONE HUNDRED SIXTY-SIX THOUSAND EIGHT HUNDRED THIRTY DOLLARS SIXTY CENTS ($166,830.60) with interest thereon at the rate of SIX (6) PERCENT from the thirtieth day of August, 1978 plus costs of this proceeding to be taxed by the Clerk.

ENTERED this 16 day of May, 1979.

Frederick Heaman
UNITED STATES DISTRICT JUDGE

JUDGMENT ON DECISION BY THE COURT

FILED

MAY 16 1979

ROBERT J. KAUFFMAN, Clerk
U. S. DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

United States District Court

FOR THE

CENTRAL DISTRICT OF ILLINOIS

CIVIL ACTION FILE NO. 75-2-069

NEAL-COOPER GRAIN COMPANY,
a corporation
vs.
HALL CHEMICAL COMPANY, a Corporation,
et al

JUDGMENT

decision

This action came on for ~~hearing~~ before the Court, Honorable J. Waldo Ackerman, United States District Judge, presiding, and the issues having been duly ~~heard~~ decided and a decision having been duly rendered,

It is Ordered and Adjudged that Final Judgment is entered in favor of Defendan INTERNATIONAL COMMODITIES EXPORT CORPORATION, a Delaware Corporation and against the Plaintiff, NEAL-COOPER GRAIN CO., a Corporation, for the sum of ONE HUNDRED SIXTY-SIX THOUSAND EIGHT HUNDRED THIRTY DOLLARS SIXTY CENTS ($166,830.60) with interest thereon at the rate of SIX (6) PERCENT from the thirtieth day of August, 1978 plus costs of this proceedings to be taxed by the Clerk. - - - - - - - - - - - - - -

Dated at Springfield, Illinois, this 16th day of May, 1979.

Robert J. Kauffman
Clerk of Court

by: Joan Keltner, Deputy Clerk

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COMMERCIAL ARBITRATION TRIBUNAL

In the Matter of the Arbitration between

INTERNATIONAL COMMODITIES EXPORT CORPORATION

AND

NEAL COOPER GRAIN COMPANY

CASE NUMBER: 1310-0066-76

WE, THE UNDERSIGNED ARBITRATORS, having been designated in accordance with the Arbitration Agreement entered into by the above-named Parties, and dated October 18, 1974 and December 9, 1974 and having duly sworn and having duly heard the proofs and allegations of the PARTIES, AWARD as follows:

1. NEAL COOPER GRAIN COMPANY, hereinafter referred to as RESPONDENT, shall pay to INTERNATIONAL COMMODITIES EXPORT CORPORATION, hereinafter referred to as CLAIMANT, the sum of ONE HUNDRED SIXTY SIX THOUSAND EIGHT HUNDRED THIRTY DOLLARS AND SIXTY CENTS ($166,830.60), with interest thereon at the rate of 6% per annum from the date of this AWARD to the date of payment.

2. All other claims and counterclaims by and between the Parties are denied.

3. The compensation of the Arbitrators totaling FOUR THOUSAND FIVE HUNDRED DOLLARS ($4,500.00) shall be borne equally by the Parties. Therefore, RESPONDENT shall pay to the American Arbitration Association the sum of TWO THOUSAND TWO HUNDRED FIFTY DOLLARS ($2,250.00) for its share of said compensation still due the Association.

4. The administrative fees of the American Arbitration Associatic totaling FOUR THOUSAND THREE HUNDRED TWENTY SEVEN DOLLARS AND SIXTY SEVEN CENTS ($4,327.67) shall be borne equally bythe Parties. Therefore, CLAIMANT shall pay to RESPONDENT the sum of ONE HUNDRED SEVENTEEN DOLLARS AND TWELVE CENTS ($117.12 for that portion of its share of said fees previously advanced by RESPONDENT to the Association and CLAIMANT shall pay to the American Arbitration Association the sum of TWENTY THREE DOLLARS AND FORTY NINE CENTS ($23.49) for that portion of its share of said fees still due the Association.

5. This AWARD is in full settlement of claims and counterclaims submitted to this Arbitration.

DATED: August 30, 1978

CHARLES J. HECHT

MARK A. BUCKSTEIN

HOWARD A. BAKER

EXHIBIT A

STATE OF)
) ss.:
COUNTY OF)

On this 31st day of August, 1978, before me personally came and appeared CHARLES S. NECHT to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

JEROME SAGER
NOTARY PUBLIC, State of New York
No. 41-4514900
Qualified in Queens County
Cert. Filed in Queens County
Commission Expires March 30, 1979

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On this 5th day of September, 1978, before me personally came and appeared MACK A. BUCKSTEIN to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

JEFFREY L. LIDDLE
Notary Public, State of New York
No. 31-4644077
Qualified in New York County
Commission Expires March 30, 1979

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On this 6TH day of SEPTEMBER, 1978, before me personally came and appeared HAROLD H. BAUER to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

LEE D. ZUCKAT
NOTARY PUBLIC, State of New York
No. 43-2833448
Qualified in Richmond County
Commission Expires March 30, 19 79